DOCKET NO. CV-13-6038400-S	:	SUPERIOR COURT
VALERIE J. BUCKLEY, ET AL.	:	JUDICIAL DISTRICT OF FAIRFIELD
V.	:	AT BRIDGEPORT
SECRETARY OF STATE, ET AL.	:	OCTOBER 7, 2013

MEMORANDUM OF DECISION

The issue in this case is whether the General Statutes § 9-453o (b)[1] requirement that a political party's authorized endorsers submit a statement of endorsement for any candidate petitioning onto the ballot under a reserved party designation[2] is satisfied by the authorized

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[1] Section 9-453o (b) provides: "Except as otherwise provided in this subsection, the Secretary of the State shall approve every nominating petition which contains sufficient signatures counted and certified on approved pages by the town clerks. In the case of a candidate who petitions under a reserved party designation the Secretary shall approve the petition only if it meets the signature requirement and if a statement endorsing such candidate is filed with the Secretary by the party designation committee not later than four o'clock p.m. on the sixty-second day before the election. In the case of a candidate who petitions under a party designation which is the same as the name of a minor party the Secretary shall approve the petition only if it meets the signature requirement and if a statement endorsing such candidate is filed in the office of the Secretary by the chairman or secretary of such minor party not later than four o'clock p.m. on the sixty-second day before the election. No candidate shall be qualified to appear on any ballot by nominating petition unless the candidate's petition is approved by the Secretary pursuant to this subsection."

[2] General Statutes § 9-453b provides, in relevant part: "No application [for nominating petition forms] made after November 3, 1981, shall contain any party designation unless a reservation of such party designation with the Secretary is in effect for all of the offices included in the application . . . ."

General Statutes § 9-453u provides further: "(a) An application to reserve a party designation with the Secretary of the State and to form a party designation committee may be made at any

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endorsers signing the candidate's nominating petition as electors. Before the court is the plaintiffs' application for permanent injunction seeking to compel the defendants to add the plaintiffs' names to the ballots for upcoming municipal elections in the town of Easton that are scheduled to be held on November 5, 2013.[3] The plaintiffs, Valerie J. Buckley, W. Derek

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time after November 3, 1981, by filing in the office of the secretary a written statement signed by at least twenty-five electors who desire to be members of such committee.

"(b) The statement shall include the offices for which candidates may petition for nomination under the party designation to be reserved but shall not include an office if no elector who has signed the application is entitled to vote at an election for such office.

"(c) The statement shall include the party designation to be reserved which (1) shall consist of not more than three words and not more than twenty-five letters; (2) shall not incorporate the name of any major party; (3) shall not incorporate the name of any minor party which is entitled to nominate candidates for any office which will appear on the same ballot with any office included in the statement; (4) shall not be the same as any party designation for which a reservation with the secretary is currently in effect for any office included in the statement; and (5) shall not be the word 'none', or incorporate the words 'unaffiliated'; or 'unenrolled' or any similarly antonymous form of the words 'affiliated' or 'enrolled'.

"(d) The statement shall include the names of two persons who are authorized by the party designation committee to execute and file with the secretary statements of endorsement required by section 9-453o and certificates of nomination as required by section 9-460.

"(e) The secretary shall examine the statement, and if it complies with the requirements of this section, the secretary shall reserve the party designation for the offices included in the statement and record such reservation in the office of the secretary. The reservation shall continue in effect from the date it is recorded until the day following any regular election at which no candidate appears on the appropriate ballot for that office under that party designation."

[3] Typically, when a litigant seeks to compel a government official to take an action, a writ of mandamus is sought. See Practice Book § 23-45 ("An action of mandamus may be brought in an individual right by any person who claims entitlement to that remedy to enforce a private duty owed to that person . . . ."). Here, however, the plaintiff has not sought a writ of mandamus but, rather, an injunction. General Statutes § 9-328, pursuant to which the present action is brought, authorized the court, however, to issue a mandamus upon a finding that the

Buckley, who is the husband of Valerie Buckley, Shaun Malay, and Randy J. Shapiro,[4] are voters in the town of Easton, each of whom seeks to run as a candidate for the Easton Coalition, a political party that the plaintiffs formed earlier this year. The defendants are the Secretary of State of Connecticut and the town clerk for the town of Easton. Also a party to this action is the Easton Republican Town Committee, as an intervenor. In their complaint, which is brought pursuant to General Statutes § 9-328,[5] the plaintiffs allege that despite having substantially

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plaintiffs should prevail. See footnote 5 of this opinion. At a hearing held on October 3, 2013, the parties stipulated however, that the court could proceed upon an application for permanent injunction.

[4] For simplicity, the court refers to the plaintiffs collectively as "the plaintiffs," and individually by name where appropriate.

[5] Section 9-328 provides: "Any elector or candidate claiming to have been aggrieved by any ruling of any election official in connection with an election for any municipal office or a primary for justice of the peace, or any elector or candidate claiming that there has been a mistake in the count of votes cast for any such office at such election or primary, or any candidate in such an election or primary claiming that he is aggrieved by a violation of any provision of sections 9-355, 9-357 to 9-361, inclusive, 9-364, 9-364a or 9-365 in the casting of absentee ballots at such election or primary, may bring a complaint to any judge of the Superior Court for relief therefrom. In any action brought pursuant to the provisions of this section, the complainant shall send a copy of the complaint by first-class mail, or deliver a copy of the complaint by hand, to the State Elections Enforcement Commission. If such complaint is made prior to such election or primary, such judge shall proceed expeditiously to render judgment on the complaint and shall cause notice of the hearing to be given to the Secretary of the State and the State Elections Enforcement Commission. If such complaint is made subsequent to such election or primary, it shall be brought not later than fourteen days after such election or primary, except that if such complaint is brought in response to the manual tabulation of paper ballots, authorized pursuant to section 9-320f, such complaint shall be brought not later than seven days after the close of any such manual tabulation, to any judge of the Superior Court, in which he shall set out the claimed errors of the election official, the claimed errors in the count or the claimed violations of said sections. Such judge shall forthwith order a hearing to be had upon such complaint, upon a day not more than five nor less than three days from the making of such order, and shall cause notice of not less than three nor more than five days to be given to any candidate or candidates whose election or

complied with the statutory prescriptions set out in General Statutes § 9-453o (b), the Secretary of State improperly rejected a nominating petition[6] that was filed by Valerie Buckley and Derek Buckley in their attempt to be placed on the ballot for the upcoming elections. The plaintiffs also claim that the town clerk improperly failed to transmit to the Secretary of State the second and third nominating petitions that were properly submitted to the town clerk on behalf of Malay and Shapiro. The plaintiffs seek relief in the form of an order requiring that: (1) the town clerk transmit the Malay and Shapiro nominating petitions to the Secretary of State, (2) the Secretary

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nomination may be affected by the decision upon such hearing, to such election official, the Secretary of the State, the State Elections Enforcement Commission and to any other party or parties whom such judge deems proper parties thereto, of the time and place for the hearing upon such complaint. Such judge shall, on the day fixed for such hearing and without unnecessary delay, proceed to hear the parties. If sufficient reason is shown, he may order any voting tabulators to be unlocked or any ballot boxes to be opened and a recount of the votes cast, including absentee ballots, to be made. Such judge shall thereupon, if he finds any error in the rulings of the election official or any mistake in the count of the votes, certify the result of his finding or decision to the Secretary of the State before the tenth day succeeding the conclusion of the hearing. Such judge may order a new election or primary or a change in the existing election schedule. Such certificate of such judge of his finding or decision shall be final and conclusive upon all questions relating to errors in the ruling of such election officials, to the correctness of such count, and, for the purposes of this section only, such claimed violations, and shall operate to correct the returns of the moderators or presiding officers, so as to conform to such finding or decision, except that this section shall not affect the right of appeal to the Supreme Court and it shall not prevent such judge from reserving such questions of law for the advice of the Supreme Court as provided in section 9-325. Such judge may, if necessary, issue his writ of mandamus, requiring the adverse party and those under him to deliver to the complainant the appurtenances of such office, and shall cause his finding and decree to be entered on the records of the Superior Court in the proper judicial district."

[6] General Statutes § 9-453a et seq. requires individuals who desire to be listed on an official election ballot, and who are not otherwise members of a major or minor political party, to submit a nominating petition with a prescribed number of signatures of electors from the relevant voting district.

of State approve all three nominating petitions, and (3) the town clerk place all four names on the ballot for the upcoming November 5, 2013 elections. For the reasons that follow, the application for injunction is DENIED.

I

FACTS

The following facts are drawn from evidence and testimony submitted at a hearing held on October 3, 2013, as well as a stipulation of facts that was entered on the record at that same hearing.[7] The plaintiffs are each voters in the town of Easton. Recently, the plaintiffs established a political party known as the Easton Coalition for the purpose of filing an application for reservation of party designation and formation of party designation committee,[8] which is required by Connecticut statute in the event an individual or group of individuals who are not members

[7] The parties stipulated to the admissibility of Exhibits 1-21, which were submitted by the Secretary of State at the October 3, 2013 hearing. Although the court does not specifically refer to each exhibit throughout the course of this memorandum, the court has reviewed and duly considered each exhibit in the course of rendering its decision.

[8] General Statutes § 9-372 (8) provides: "'Party designation committee' means an organization, composed of at least twenty-five members who are electors, which has, on or after November 4, 1981, reserved a party designation with the Secretary of State pursuant to the provisions of this chapter."

of a major party[9] or a minor party[10] desire to run as candidates under a reserved party designation. Specifically, the plaintiffs filed the application for reservation of party designation with the intent of running Valerie Buckley as first selectman, Derek Buckley as town clerk,[11] Malay for the board of education, and Shapiro as treasurer.

On July 10, 2013, the plaintiffs filed their application for reservation of party designation,[12] which included the required designation of two individuals as authorized endorsers who were given the authority to submit a statement of endorsement to the Secretary of State pursuant to General Statutes § 9-453o (b). The application for party designation named Valerie Buckley and Derek Buckley as the Easton Coalition's authorized endorsers, and was subsequently accepted by the Secretary of State.

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[9] General Statutes § 9-372 (5) provides: "'Major party' means (A) a political party or organization whose candidate for Governor at the last-preceding election for Governor received, under the designation of that political party or organization, at least twenty per cent of the whole number of votes cast for all candidates for Governor, or (B) a political party having, at the last-preceding election for Governor, a number of enrolled members on the active registry list equal to at least twenty per cent of the total number of enrolled members of all political parties on the active registry list in the state."

[10] General Statutes § 9-372 (6) provides: "'Minor party' means a political party or organization which is not a major party and whose candidate for the office in question received at the last-preceding regular election for such office, under the designation of that political party or organization, at least one per cent of the whole number of votes cast for all candidates for such office at such election."

[11] Derek Buckley is the present incumbent town clerk for the town of Easton.

[12] Exhibit 9.

Also on July 10, 2013, the plaintiffs filed with the Secretary of State a single application for nominating petition for both Valerie Buckley and Derek Buckley.[13] This application is required of any individual who desires to receive a nominating petition from the Secretary of State.[14] The application for nominating petition listed Valerie Buckley as the Easton Coalition candidate for first selectman and Derek Buckley as the Easton Coalition candidate for town clerk. The Secretary of State acknowledged receipt of the application for nominating petition via an acknowledgment letter dated July 17, 2013,[15] which had attached to it a single blank nominating petition that listed Valerie Buckley as the Easton Coalition's candidate for first selectman and Derek Buckley as the Easton Coalition's candidate for town clerk (Buckley nominating petition).

On July 25, 2013, the Easton Coalition held a regularly scheduled meeting at which the party endorsed Valerie Buckley as the party's candidate for first selectman and Derek Buckley as the party's candidate for town clerk. Although it has not been the practice of the Easton Coalition, which has only had five meetings to date, to keep official minutes, the Buckleys each

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[13] Exhibit 8.

[14] Section 9-453b provides, in pertinent part: "The Secretary shall not issue any nominating petition forms unless the person requesting the nominating petition forms makes a written application for such forms, which application shall contain the following: (1) The name or names of the candidates to appear on such nominating petition, compared by the town clerk of the town of residence of each candidate with the candidate's name as it appears on the last-completed registry list of such town, and verified and corrected by such town clerk or in the case of a newly admitted elector whose name does not appear on the last-completed registry list, the town clerk shall compare the candidate's name as it appears on the candidate's application for admission and verify and correct it accordingly; (2) a signed statement by each such candidate that the candidate consents to the placing of the candidate's name on such petition; and (3) the party designation, if any."

[15] Exhibit 10.

kept personal notes of occurrences at the meetings. Minutes also existed in the form of a series of emails that were regularly sent between various members of the Easton Coalition following each meeting; none of the notes or emails were introduced as exhibits at the October 3, 2013 hearing and none were provided to the Secretary of State.

On July 30, 2013, Valerie Buckley delivered the Buckley nominating petition to the town clerk.[16] Although the petition included the signatures of both Valerie Buckley and Derek Buckley on signature lines one and two, the plaintiffs did not submit a separate statement of endorsement for either Valerie Buckley or Derek Buckley. The Buckleys believed that their signatures on the nominating petition served the dual purpose of both satisfying the number of elector signatures required for the petition and also of providing a statement of endorsement approving the Buckleys as endorsed candidates.

Thereafter, after the town clerk certified the signatures on the petition and transmitted it to the Secretary of State, the Secretary of State declined to approve the nominating petition because the Easton Coalition had not submitted a separate statement of endorsement by September 4, 2013, pursuant to § 9-453o (b). The Secretary of State notified Valerie Buckley and Derek Buckley of the decision to disapprove the nominating petition via separate letters to Valerie Buckley and Derek Buckley dated September 11, 2013.

In the meantime, on July 31, 2013, the Easton Coalition held a special meeting for the purpose of endorsing Malay and Shapiro as the Easton Coalition candidates for the board of

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[16] Exhibit 11.

education and for treasurer, as the party was aware that the deadline for submitting nominating petitions to the Secretary of State for all candidates was August 7, 2013. Again, although Valerie Buckley testified that minutes of the meeting exist in the form of her personal notes, Derek Buckley's personal notes, and emails between various members of the party, none of these documents were introduced as evidence during the October 3, 2013 hearing and none were provided to the Secretary of State.

On August 5, 2013, the plaintiffs submitted Malay's application for nominating petition to the Secretary of State, receiving an acknowledgment of receipt of that application on that same date, which included a blank nominating petition for Malay. On August 6, 2013, the plaintiffs submitted Shapiro's application for nominating petition to the Secretary of State, again receiving an acknowledgment and blank nominating petition on that same date.

On August 6 and 7, 2013, respectively, before the plaintiffs learned that the Buckley nominating petition had been rejected by the Secretary of State, the plaintiffs delivered the completed nominating petitions for Malay and Shapiro to the town clerk.[17] As with the Buckley petition, these petitions contained the signatures of Valerie Buckley and Derek Buckley on signature lines one and two. For reasons that are unclear, but which are immaterial to the issues before the court, the town clerk did not submit either the Malay or Shapiro petitions to the Secretary of State at that time.[18] The plaintiffs also did not submit separate statements of

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[17] Exhibit 21.

[18] At the October 3, 2013 hearing, counsel for the town clerk represented that the two petitions have since been transmitted to the Secretary of State's office. On this basis, counsel for the town clerk argued that the only relief sought from the town clerk had already been

endorsement with respect to either the Malay or Shapiro petitions prior to September 4, 2013, again operating upon the assumption that the signatures of Valerie Buckley and Derek Buckley on the nominating petitions were sufficient to operate as a statement of endorsement. The Secretary of State ultimately disapproved the Malay and Shapiro petitions because the town clerk had not transmitted the petitions to the Secretary of State before the August 7, 2013 deadline. Malay and Shapiro were informed of the Secretary of State's decision via separate letters to each dated September 11, 2013.

On September 13, 2013, the Secretary of State sent an additional letter to Valerie Buckley in response to inquiries she had made as to why her nominating petition had been rejected. The letter explains that Valerie Buckley's nominating petition was rejected because a separate statement of endorsement was not filed by the Easton Coalition with respect to Valerie Buckley's nominating petition by September 4, 2013, the deadline for the submission of statements of endorsement, a requirement which the Secretary of State interpreted as deriving from § 9-453o (b). The letter also states that the September 4, 2013 deadline was indicated on: (1) the acknowledgment letter from the Secretary of State to Valerie Buckley dated July 17, 2013; (2) the application for nominating petition; (3) the Secretary of State's instruction page for

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afforded to the plaintiffs, making their claim against the town clerk moot, and sought to withdraw from the action. The court reserved decision on whether to permit the town clerk to withdraw. To the extent a ruling is required on this matter, the town clerk's oral motion to withdraw is denied.

completing a nominating petition; and (4) the Secretary of State's instructions for completing an application for nominating petition.[19]

After learning that the nominating petitions had been rejected, Valerie Buckley traveled to the Secretary of State's office and spoke with either Pearl Williams, an election officer, or with one of two other unidentified individuals.[20] Valerie Buckley testified that during this conversation, she informed the Secretary of State's office that her signature and Derek Buckley's signature on each of the nominating petitions were intended as statements of endorsement with respect to each petition. At no time prior to the rejection of the petitions, however, did she specifically speak with any employee of the Secretary of State's office as to whether a statement of endorsement was required to be a separate form or letter, or whether it was sufficient, in the Secretary of State's opinion, for a party's authorized endorsers to have signed a nominating petition as electors. In addition, significant to the issues discussed below, counsel for the plaintiffs represented at the October 3, 2013 hearing that the plaintiffs were not claiming bad faith nor any sort of reliance on any representation made to the plaintiffs by the Secretary of State.

On September 26, 2013, the plaintiffs filed their complaint, as well as their application for temporary and permanent injunction seeking: (1) to require the Town Clerk to transmit the Malay and Shapiro nominating petitions to the Secretary of State, (2) to require the Secretary of

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[19] At the October 3, 2013 hearing, counsel for the Secretary of State represented on the record that the Secretary of State maintained the same position with respect to each of the plaintiffs' three nominating petitions.

[20] The precise date of this conversation was unclear from Valerie Buckley's testimony, occurring sometime after she learned that the nominating petitions had been disapproved. She personally visited the office in Hartford on at least five separate occasions.

State approve all three nominating petitions, and (3) to have the town clerk place all four names on the ballot for the upcoming November 5, 2013 elections. On September, 27, 2013, the court, *Bellis, J.*, issued an order to show cause to the defendants, which set October 3, 2013 as the hearing date. On October 3, 2013, prior to the commencement of the hearing, the Easton Republican Town Committee filed its motion to intervene as of right or, in the alternative, for permissive intervention, claiming an interest in the suit on the grounds that its candidates would be affected by the court's decision. The motion was granted without objection.

The court held a hearing on the plaintiff's application for permanent injunction on October 3, 2013. Immediately following the hearing's commencement, the court raised the issue of whether proper notice had been given to all parties with an interest in the suit as an issue of subject matter jurisdiction. See *Lobsenz* v. *Davidoff*, 182 Conn. 111, 115, 438 A.2d 21 (1980) (addressing whether court lacked subject matter jurisdiction due to failure to provide notice to all affected parties pursuant to § 9-328; concluding absent parties did not possess interest in suit because relief sought could not affect absent parties).[21] After a series of recesses, counsel for the Easton Republican Town Committee represented that all republican candidates for the four positions had received notice and had elected not to attend the hearing. Counsel for the plaintiff

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[21] Specifically, § 9-328 provides, in relevant part: "Such judge shall forthwith order a hearing to be had upon such complaint . . . and shall cause notice of not less than three nor more than five days to be given to any candidate or candidates whose election or nomination may be affected by the decision upon such hearing, to such election official, the Secretary of the State, the State Elections Enforcement Commission and to any other party or parties whom such judge deems proper parties thereto, of the time and place for the hearing upon such complaint."

represented further that all candidates from Easton's Democratic party for the four positions had received notice and had elected not to attempt to intervene or to be present at the hearing. The parties also represented to the court that no other candidates existed for any other seat. Accordingly, the court found that sufficient notice had been given to all candidates whose nomination might be affected and to all other parties to whom notice was proper.[22]

Before proceeding, the court notes that, although the plaintiffs have titled their application an "Application for Temporary and Permanent Injunction," the parties agree that due to the time-sensitive nature of the present dispute the court should address the plaintiffs' application solely as an application for a permanent injunction. For the same reason, at the October 3, 2013 hearing, the court indicated that it would rule from the bench at a subsequent hearing scheduled for October 7, 2013, and simultaneously issue this memorandum of decision. Further facts will be recited as necessary.

II

DISCUSSION

The plaintiffs present two primary arguments. The plaintiffs first argue, noting that courts should interpret election statutes in favor of permitting access to ballots, that the signatures of

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[22] Counsel for the plaintiffs maintained the position that notice to the other candidates for the four positions was not required on the ground that § 9-328 provides different notice provisions depending upon whether a cause of action brought pursuant to that section is commenced prior to or following an election. Although the court noted on the record that the language of the statute was somewhat unclear, the court concluded that notice to all candidates was required because the language of § 9-328 specifically directs that the "judge shall forthwith order a hearing to be had . . . and shall cause notice . . . to be given to any candidate or candidates whose election *or nomination* may be affected by the decision upon such hearing . . . ." (Emphasis added.).

Valerie Buckley and Derek Buckley on lines one and two of each of the three nominating petitions are sufficient to satisfy the requirement of a statement of endorsement because the Buckleys believed that they were signing the petitions for the dual purpose of signing as both electors and as the Easton Coalition's authorized endorsers. The plaintiffs argue that the statute is ambiguous as to the form of a statement of endorsement, and thus permits a statement of endorsement to be the same document as a nominating petition, or to be included as part of a nominating petition. In support of this argument, the plaintiffs contend: the statute does not explicitly use the word "separate" in relation to the requirement of a statement of endorsement; the Secretary of State has no officially adopted form which must be used in order to file a statement of endorsement; the statute does not require any particular language in a statement of endorsement; the purpose of the statement of endorsement is to confirm that a reserved party actually endorses the candidate petitioning under its name; and each of the four petitions did contain a signature by the Easton Coalition's authorized endorsers.

Second, in the event the court concludes that the signatures on the nominating petition do not satisfy the requirement of a statement of endorsement and that a statement of endorsement must be a separate document, the plaintiffs argue that they have complied with the statute's central purpose of ensuring that a candidate is actually endorsed by a party and, therefore, the plaintiffs' failure to strictly comply with the statute should be excused. The plaintiffs concede that the requirement of a statement of endorsement is mandatory, but contend that it does not make sense for the plaintiffs to have to file a separate statement of endorsement when the

authorized endorsers have already signed the nominating petition. The plaintiffs also contend that there is no dispute that each of the plaintiffs are endorsed candidates.

In response, the Secretary of State argues that the Secretary of State serves as the Commissioner of Elections; see General Statutes § 9-3;[23] and, accordingly, her interpretation of statutes she is charged with enforcing, including § 9-453o (b), is presumed to be correct and should be accorded deference. The Secretary of State argues that it has consistently in the past interpreted § 9-453o (b) as requiring a separate statement of endorsement for any candidate petitioning under a reserved party designation and that all of its instructions and informational pamphlets, as well as the nominating petitions themselves, indicate that this is the case. The Secretary of State also argues that the requirement of a separate statement of endorsement is not merely a pro forma requirement, but based upon the statute's purpose of ensuring that a candidate is actually endorsed. The Secretary of State argues further that the nominating petition form contains no mention of endorsement and does not provide a space for a statement of endorsement, rendering it insufficient to ensure that both the party and candidate agree that the candidate is running on behalf of the party. The Secretary of State also argues that, assuming the statute could permit a nominating petition to also serve as a statement of endorsement, the nominating petitions

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[23] Section 9-3 provides: "The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, *shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title*, except for chapter 155, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54." (Emphasis added.).

in this case do not indicate on their face the timing of the Buckleys' endorsement, which is significant because the Easton Coalition did not endorse the plaintiffs until its July 25, 2013 and July 31, 2013 meetings. Regarding the plaintiff's second argument, the Secretary of State takes the position that the statute is mandatory because the statute specifically provides that the Secretary of State can only approve a nominating petition if a statement of endorsement is filed and because only a candidate whose nominating petition has been approved can appear on the ballot.

The Republican Town Committee, for its part, agreed with the Secretary of State, adding that the nominating petition does not contain the word "endorsement" and that this court should follow the reasoning of *Caterbone* v. *Bysiewicz*, Superior Court, judicial district of Stamford, Docket No. CV-10-6005682-S (August 30, 2010, *Adams, J.*), wherein Judge Adams held that the court does not have the right to add its interpretation to an election statute when the statutory language is clear. In response to this position, the defendants respond that *Caterbone* v. *Bysiewicz* is distinguishable because that case concerned a major party and a different statute.

At the outset, the court notes that the plaintiffs have not claimed that the requirement of a separate statement of endorsement is unconstitutional under either the state or federal constitutions.[24] Rather, their claim is either that the Buckleys' signatures on the nominating petitions serve as the required statement of endorsement or that they have substantially complied

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[24] "[W]hen a state ballot access law provision imposes only reasonable, nondiscriminatory restrictions upon the plaintiffs' [f]irst and [f]ourteenth [a]mendment rights, a [s]tate's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." (Internal quotation marks omitted.) *Butts* v. *Bysiewicz*, supra, 298 Conn. 673 n.6.

with the purpose of the statute. The court addresses these arguments by analyzing the pertinent statutory language to determine whether a statement of endorsement must be separate from a nominating petition, whether noncompliance with this provision of the statute is excusable, and, addressing whether the court nevertheless possesses authority to use its equitable powers to issue the injunction. See generally *Butts* v. *Bysiewicz*, 298 Conn. 665, 5 A.3d 932 (2010).

Before proceeding the court notes that at the October 3, 2013 hearing, the issue was raised with regard to similarities between this case and the recently resolved case of *Lessing* v. *Strauss*, Superior Court, judicial district of Stamford, Docket No. CV-13-6019887-S, which concerned an attempt by several individuals from the "Save Westport Now" party to gain access to the ballot for upcoming elections in the town of Westport as candidates for the town's planning and zoning commission.[25] There, the town clerk declined to add the candidates's names to the ballot due to a failure to comply with General Statutes § 9-452,[26] which requires candidates from a minor party

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[25] At least two more such cases addressing the same issue are presently proceeding before the Superior Court for the judicial district of Middlesex. See *Dostaler* v. *Wielaba*, Superior Court, judicial district of Middlesex, Docket No. CV-13-6010514-S and *Kilian* v. *Bettencourt*, Superior Court, judicial district of Middlesex, Docket No. CV-13-5008216-S.

[26] Section 9-452 provides: "All minor parties nominating candidates for any elective office shall make such nominations and certify and file a list of such nominations, as required by this section, not later than the sixty-second day prior to the day of the election at which such candidates are to be voted for. A list of nominees in printed or typewritten form that includes each candidate's name *as authorized by each candidate to appear on the ballot, the signature of each candidate*, the full street address of each candidate and the title and district of the office for which each candidate is nominated shall be certified by the presiding officer of the committee, meeting or other authority making such nomination and shall be filed by such presiding officer with the Secretary of the State, in the case of state or district office or the municipal office of state representative, state senator or judge of probate, or with the clerk of the municipality, in the case of municipal office, not later than the sixty-second day prior to the day of the election. The registrars of voters of such municipality shall promptly verify and correct the names on any such list filed with him, or the names of nominees forwarded to the

to sign the certified candidate list submitted by the minor party to the town clerk in order to indicate their assent to the candidacy. The case was resolved on September 30, 2013 by way of a stipulated agreement between the parties that the candidates' names could be placed on the ballot, which was entered by the court as an order on the record. There, the court agreed to enter the stipulation only after concluding that § 9-452 was not mandatory.

Because *Lessing* v. *Strauss* addressed a minor party and a different statute, the result of that case has no bearing on the issues before this court except to the extent that it stands for the proposition that a court cannot enter an order in contravention of a mandatory statute. Indeed, Judge Povodator, referencing *Butts* v. *Bysiewicz*, supra, 298 Conn. 665,[27] made clear on the record that the court could not enter the parties' stipulation as an order unless § 9-452 was not mandatory.

"[W]hen interpreting a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . To do so, we first consult the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. General Statutes § 1–2z. . . . A statute is ambiguous if, when read in context, it is susceptible to

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clerk of the municipality by the Secretary of the State, in accordance with the registry list of such municipality and endorse the same as having been so verified and corrected. For purposes of this section, a list of nominations shall be deemed to be filed when it is received by the Secretary or clerk, as appropriate." (Emphasis added.).

[27] The court, Povodator, J., referenced the "Salem case," which was later identified by the Secretary of State on the record as *Butts* v. *Bysiewicz*, supra, 298 Conn. 665.

more than one reasonable interpretation." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Butts* v. *Bysiewicz*, supra, 298 Conn. 672-73. Courts "read the statute as a whole in order to reconcile all of its parts. . . . Every word and phrase is presumed to have meaning, and we do not construe statutes so as to render certain words and phrases surplusage." (Internal quotation marks omitted.) *Ugrin* v. *Cheshire*, 307 Conn. 364, 383, 54 A.3d 532 (2012). The court is mindful that "[s]tate statutes which restrict the access of political parties to the ballot implicate associational rights as well as the rights of voters to cast their votes effectively. . . . The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom. . . . Freedom of association means not only that an individual voter has the right to associate with the political party of her choice . . . but also that a political party has a right to identify the people who constitute the association . . . and to select a standard bearer who best represents the party's ideologies and preferences. . . . Each provision of [an election] code, whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects — at least to some degree — the individual's right to vote and his right to associate with others for political ends. . . . Therefore, [c]ommon sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." (Citations omitted; internal quotation marks omitted.) *Butts* v. *Bysiewicz*, supra, 298 Conn. 674.

"[T]o give due weight to the interests of the voters, candidates and political parties, on the one hand, and the legislature, on the other hand, [courts] are guided by the following additional principles. Ambiguities in election laws are construed to allow the greatest scope for public participation in the electoral process, to allow candidates to get on the ballot, to allow parties to put their candidates on the ballot, and most importantly to allow the voters a choice on Election Day. . . . This principle, however, does not authorize the court to substitute its views for those of the legislature." (Citation omitted; internal quotation marks omitted.) *Butts* v. *Bysiewicz*, supra, 298 Conn. 675. "[I]t is the well established practice of [the courts] to accord great deference to the construction given [a] statute by the agency charged with its enforcement . . . ." (Internal quotation marks omitted.) *Starr* v. *Commissioner of Environmental Protection*, 236 Conn. 722, 728, 675 A.2d 430 (1996); see also *Katz* v. *Commissioner of Revenue Services*, 234 Conn. 614, 622, 662 A.2d 762 (1995). Finally, General Statutes § 9-3 provides "the [Secretary of State's] regulations, declaratory rulings, instructions and opinions, if in written form, *shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title* . . . ." (Emphasis added.).

The court first addresses whether § 9-453o (b) requires a statement of endorsement to be a separate document from a nominating petition, beginning with General Statutes § 9-379, which provides: "No name of any candidate shall be printed on any official ballot at any election except the name of a candidate nominated by a major or minor party *unless a nominating petition for such candidate is approved by the Secretary of the State as provided in sections 9-453a to 9-453p, inclusive*." (Emphasis added.). Thus, any individual desiring to appear on an official ballot

for any election must either be nominated by a major or minor party, or have had a nominating petition approved by the Secretary of State. See *Reale* v. *Bysiewicz*, 298 Conn. 808, 812-13, 6 A.3d 1138 (2010). Where, as here, a candidate "was neither nominated by a major party or a minor party, [the candidate] could only have obtained a place on the ballot . . . as a petitioning candidate under § 9-453a et seq." Id., 813. When such a candidate desires to petition under a reserved party designation, the petition must list the party's name. Id.; see also General Statutes §§ 9-453a and 9-453b. In addition, an authorized endorser for the party must "file a statement endorsing [the candidate] as its candidate . . . ." *Reale* v. *Bysiewicz*, supra, 813.

The parties have stipulated that the plaintiffs are not members of a major or minor party and, therefore, there is no dispute that in order to prevail they must comply with § 9-453a et seq., including § 9-453o (b). The section provides, in relevant part: "Except as otherwise provided in this subsection, the Secretary of the State shall approve every nominating petition which contains sufficient signatures counted and certified on approved pages by the town clerks. In the case of a candidate who petitions under a reserved party designation *the Secretary shall approve the petition only if* it meets the signature requirement [provided by § 9-453o (a)] and if *a statement endorsing such candidate is filed with the Secretary by the party designation committee* not later than four o'clock p.m. on the sixty-second day before the election. . . . *No candidate shall be qualified to appear on any ballot by nominating petition unless the candidate's petition is approved by the Secretary pursuant to this subsection.*" (Emphasis added.). General Statutes § 9-453o (b).

The above language provides that the Secretary of State must approve any nominating petition that meets two requirements. First, the petition must satisfy the signature requirement set by § 9-453o (a),[28] which provides that a nominating petition must contain the requisite number of valid signatures of electors as calculated by § 9-453d.[29] There is no dispute that this requirement was satisfied with respect to all four plaintiffs.

The second requirement is that the authorized endorsers for the party send a statement of endorsement to the Secretary of State indicating that the candidate listed on the nominating petition is the party's endorsed candidate. As previously noted, the parties dispute whether this provision of the statute requires a separate statement of endorsement, or whether it permits a nominating petition to also serve as a statement of endorsement. The court concludes that

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[28] Section 9-453o (a) provides: "The Secretary of the State may not count for purposes of determining compliance with the number of signatures required by section 9-453d the signatures certified by the town clerk on any petition page filed under sections 9-453a to 9-453s, inclusive, or 9-216 if: (1) The name of the candidate, his address or the party designation, if any, has been omitted from the face of the petition; (2) the page does not contain a statement by the circulator as to the residency in this state and eligibility of the circulator and authenticity of the signatures thereon as required by section 9-453j or upon which such statement of the circulator is incomplete in any respect; or (3) the page does not contain the certifications required by sections 9-453a to 9-453s, inclusive, by the town clerk of the town in which the signers reside. The town clerk shall cure any omission on his part by signing any such page at the office of the Secretary of the State and making the necessary amendment or by filing a separate statement in this regard, which amendment shall be dated."

[29] Section 9-453d provides: "Each petition shall be signed by a number of qualified electors equal to the lesser of (1) one per cent of the votes cast for the same office or offices at the last-preceding election, or the number of qualified electors prescribed by section 9-380 with regard to newly-created offices, or (2) seven thousand five hundred. 'Qualified electors' means electors eligible to vote for all the candidates proposed by the petition. 'Votes cast for the same office at the last-preceding election' means, in the case of multiple openings for the same office, the total number of electors checked as having voted at the last-preceding election at which such office appeared on the ballot."

§ 9-453o (b) is unambiguous and requires a statement of endorsement to be separate from a nominating petition for the following reasons.

First, counsel for the Secretary of State represented to the court that it has consistently been the Secretary of State's interpretation that § 9-453o (b) requires a statement of endorsement to be a separate document from a nominating petition, as evidenced in a number of the Secretary of State's written instructions.[30] For example, the Secretary of State's "Instruction Page for Nominating Petitions"[31] states "[a] nominating petition filed with a party designation ***will not*** be approved by the Secretary of the State unless a statement endorsing the candidate(s) listed on the petition is filed, with the Secretary of the State, by the agents for the party designation committee . . . by **4:00 p.m. Wednesday, September 4, 2013**." (Emphasis in original.). In addition, the Secretary of State's "Frequently Asked Questions"[32] refers to a nominating petition as "[a] formal written application" and a statement of endorsement as "a written document signed by the two individuals on the Application for Reservation of Party Designation . . . ." . Further, the Secretary of State's "Instruction for Completing Application for Nominating Petition and Party Reservation Form"[33] specifically states "[t]here is no prescribed form for the Statement of

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[30] Theodore Bromley, a staff attorney with the legislation and elections administration division of Secretary of State's office, identified Exhibits 2, 4, 5, 6, 8, 10, 12, 13, 14, and 15, some of which are duplicates, as containing information evidencing that a statement of endorsement is a separate document from a nominating petition.

[31] Exhibit 1, Exhibit 5.

[32] Exhibit 1, Exhibit 7.

[33] Exhibit 1, Exhibit 4. Valerie Buckley testified that she did not see this document until after the nominating petitions had been rejected.

Endorsement. *It is a letter created by the two individuals* listed on Form ED-601 [the authorized endorsers]" (emphasis altered); following which the instructions provide a sample statement of endorsement. Finally, the nominating petition form itself[34] does not indicate anywhere that it is a statement of endorsement, nor does it contain the word "endorse" or "endorser." The Secretary of State's interpretation that § 9-453o (b) requires a statement of endorsement that is separate from a nominating petition, which is consistent with her written instructions and informational pamphlets, is presumed correct and is to be accorded deference. General Statutes § 9-3.

Second, none of the sections contained in § 9-453a et seq. governing a nominating petition indicate that a statement of endorsement can be made on a nominating petition. To the contrary, for example, § 9-453d indicates that the signatures on a nominating petition, which in this case includes the Buckleys' signatures on lines one and two of each petition, are the signatures of electors, not authorized endorsers.

Third, nothing contained in any language of § 9-453a et seq. authorizes an individual to sign a nominating petition for the dual purpose of signing as an elector and an authorized endorser. Thus there is no statutory authority supporting the plaintiffs' position that it was permissible for the Buckleys to do so.

Fourth, the statutory scheme provides different deadlines for the submission of a nominating petition and a statement of endorsement. Compare General Statutes § 9-453i (a) ("Each page of a nominating petition proposing a candidate for an office to be filled at a regular election shall be submitted to the appropriate town clerk or to the Secretary of the State not later

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[34] Exhibit 1, Exhibit 2.

than four o'clock p.m. on the *ninetieth day* preceding the day of the regular election." [Emphasis added.]) with General Statutes § 9-453o (b) ("the Secretary shall approve the petition only if . . . a statement endorsing such candidate is filed with the Secretary by the party designation committee not later than four o'clock p.m. on the *sixty-second* day before the election." [Emphasis added.]). The plaintiffs are correct that § 9-453o (b) does not explicitly use the word "separate," nor does that subsection explicitly refer to the statement of endorsement as a separate document. Nevertheless, this fact is not dispositive because statutes are to be read as a whole and in conjunction with other statutes. Accordingly, based upon a construction of the statute as a whole, including its relationship to other statutes, the court concludes that a statement of endorsement is required by § 9-453o (b) is a separate document from a nominating petition.

Even if the court were to conclude that the nominating petition could also serve as a statement of endorsement, this conclusion would not help the plaintiffs because there is no indication on the face of the petition that the plaintiffs signed as endorsers. Despite the testimony of Valerie Buckley that she and her husband signed each of the petitions with the intent to endorse each of the four candidates, she also conceded during her testimony that the nominating petition form contains no place for an authorized endorser to indicate his or her endorsement of a candidate. As a result, the Buckley's intent to sign the petitions as authorized endorsers could not have been gleaned by the Secretary of State from the face of the petitions themselves. The Buckleys did not attempt to write on any of the petitions, for example, that their signatures served the dual purpose of both signing as electors and also as authorized endorsers, and the word "endorsement" does not appear anywhere on any of the petitions. This fact also highlights why

the requirement of a separate statement of endorsement is not merely a formality. The plaintiffs' position implies that it was incumbent upon the Secretary of State to compare multiple documents to determine whether a statement of endorsement had been submitted. This is because if the plaintiffs are correct in that their signatures on the petitions served a dual purpose, the only way for the Secretary of State to have learned that the signatures served such a dual purpose would have been to compare the nominating petitions with the Easton Coalition's application for designation of party reservation, which is the only other indication that the Buckleys were the Easton Coalition's authorized endorsers. Thus, absent a facial showing of endorsement on the face of the nominating petitions, the Secretary of State had no way of concluding that an endorsement had been made without looking to multiple documents.

The court must next address whether, notwithstanding the plaintiffs' noncompliance with the separate statement of endorsement provision, the Easton Coalition may nevertheless run the candidates of its choice, an inquiry that is dependent upon whether the statute's provisions are mandatory or directory. "Definitive words, such as must or shall, ordinarily express legislative mandates of nondirectory nature. . . . The test to be applied in determining whether a statute is mandatory or directory is whether the prescribed mode of action is the essence of the thing to be accomplished, or in other words, whether it relates to a matter of substance or a matter of convenience." (Citation omitted; internal quotation marks omitted.) *Butts* v. *Bysiewicz*, supra, 298 Conn. 676.

In *Butts* v. *Bysiewicz*, supra, 298 Conn. 665, the court was asked to interpret language contained in General Statutes § 9-388,[35] which requires a major political party to submit to the Secretary of State a candidate certification signed by the party's chairman or secretary following the nomination of a candidate at a nominating convention. Specifically at issue in that case was whether the statute's requirement that such a certificate be submitted within fourteen days following the convention either by certified mail or by hand delivery was mandatory or directory. The court concluded that the language was mandatory because the statute used the word "shall" with respect to numerous directives, contained negative language, and also because the statute contained specific consequences for noncompliance, including that the candidate's certificate would be invalid.

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[35] Section 9-388 provides: "Whenever a convention of a political party is held for the endorsement of candidates for nomination to state or district office, each candidate endorsed at such convention shall file with the Secretary of the State a certificate, signed by him, stating that he was endorsed by such convention, his name as he authorizes it to appear on the ballot, his full residence address and the title and district, if applicable, of the office for which he was endorsed. Such certificate shall be attested by either (1) the chairman or presiding officer, or (2) the secretary of such convention and shall be received by the Secretary of the State not later than four o'clock p.m. on the fourteenth day after the close of such convention. Such certificate shall either be mailed to the Secretary of the State by certified mail, return receipt requested, or delivered in person, in which case a receipt indicating the date and time of delivery shall be provided by the Secretary of the State to the person making delivery. If a certificate of a party's endorsement for a particular state or district office is not received by the Secretary of the State by such time, such certificate shall be invalid and such party, for purposes of section 9-416 and section 9-416a shall be deemed to have made no endorsement of any candidate for such office. If applicable, the chairman of a party's state convention shall, forthwith upon the close of such convention, file with the Secretary of the State the names and full residence addresses of persons selected by such convention as the nominees of such party for electors of President and Vice-President of the United States in accordance with the provisions of section 9-175."

The plaintiffs contend that *Butts* v. *Bysiewicz* is inapposite to this case because it concerned a major party and a different statute. Although the plaintiffs are correct on this point, the court concludes that principles of interpretation set forth by *Butts* v. *Bysiewicz* are both persuasive and applicable in the present context. Thus, despite the fact that § 9-453o (b) contains language different from the language at issue in *Butts* v. *Bysiewicz*, in the present case it is clear that, as with the statute in that case, the legislature intended § 9-453o (b) to be mandatory.

Subsection (b) of § 9-453o first provides that: "Except as otherwise provided in this subsection, the Secretary of the State shall approve every nominating petition which contains sufficient signatures . . . ." Thus the statute makes clear, by use of the word "shall," that the Secretary of State is required to approve any petition that contains the requisite number of signatures, unless another provision of subsection (b) provides otherwise.

Subsection (b) continues: "In the case of a candidate who petitions under a reserved party designation *the Secretary shall approve the petition only if* it meets the signature requirement [provided by § 9-453o (a)] *and if a statement endorsing such candidate is filed with the Secretary by the party designation committee* not later than four o'clock p.m. on the sixty-second day before the election." (Emphasis added.). The above sentence indicates that the Secretary is required to approve the petition "*only if*" the petition meets the signature requirement "*and if* a statement endorsing [the] candidate is filed with the Secretary . . . ." (Emphasis added.). Thus, the second sentence of subsection (b) modifies the first sentence by providing that a nominating petition by a candidate under a reserved party designation is to be approved only if the petition satisfies the two requirements of containing a sufficient number of signatures and having a statement of

endorsement filed with the Secretary. That this language is mandatory is unequivocally indicated by the fact that the sentence uses the words "shall" and "only if."

Furthermore, the last sentence of subsection (b) provides: "No candidate shall be qualified to appear on any ballot by nominating petition unless the candidate's petition is approved by the Secretary pursuant to this subsection." This sentence is of particular importance because it creates a negative consequence for noncompliance, namely, that a candidate cannot be approved by the Secretary of State if the statutory requirements were not met.

That § 9-453o (b) is mandatory is further established by its relationship to other statutes. That section is part of chapter 153 of title 9 of the General Statutes, comprised of §§ 9-372 to 9-461, which is a comprehensive set of statutes regulating elections in Connecticut. As noted earlier in this memorandum, § 9-379, also part of chapter 153, provides: "No name of any candidate shall be printed on any official ballot at any election except the name of a candidate nominated by a major or minor party *unless a nominating petition for such candidate is approved by the Secretary of the State as provided in sections 9-453a to 9-453p, inclusive*." (Emphasis added.). The language of this statute plainly excludes from an official ballot all names of all candidates "except the name of a candidate" who has been nominated by a major or minor party, or has been approved by the Secretary of State as provided in §§ 9-453a to 9-453p. Thus, § 9-379 further indicates that compliance with § 9-453o (b) in this case is mandatory.

Based upon the above, the plaintiff's noncompliance with the statute is fatal to their nominating petitions. It is not sufficient, as the plaintiffs argue, that they have substantially complied with the spirit and purpose of the statute. The statute does not merely intend to achieve

a particular purpose but, rather, prescribes the precise and exclusive manner in which individuals petitioning under reserved party designation may appear on an election ballot. Put differently, a separate statement of endorsement is the only statutorily authorized means by which the Secretary of State may confirm a candidate's endorsement; *Butts* v. *Bysiewicz*, supra, 298 Conn. 679; and the fact that the Buckleys signed the petitions *as electors* does not relieve them of their obligation to submit a separate statement of endorsement which they have signed as *authorized endorsers*. This distinction is important because an elector signs on behalf of his or herself, whereas an endorser signs on behalf of his or her political party.

Having concluded that the statute is mandatory, the court next addresses whether it may nevertheless exercise its equitable powers to issue the injunction sought by the plaintiffs. The court concludes that it cannot.

The Supreme Court has stated, "we are unaware of any circumstance under which the legislature has authorized the court to compel a state official to perform an act that the official is barred by statute from doing." *Butts* v. *Bysiewicz*, supra, 298 Conn. 683; see also *Caterbone* v. *Bysiewicz*, supra, Superior Court, Docket No. CV-10-6005682-S (court is without authority to enter order compelling state official to take action in direct contravention of mandatory statute). Furthermore, "[e]quity only applies in the absence of a specific statutory mandate. . . . [I]t is not [a court's] place to create an equitable remedy for a hardship created by an unambiguous, validly enacted legislative decree. . . . This should be particularly true of election law. If [the] [c]ourt were to erode the statutory requirements of election law through the use of equity, [it] would create ambiguity and inconsistency in what needs to be a uniform and stable area of law. Once

one exception is created, the very foundation of our form of government can be questioned and our citizens may lose faith. . . . Holding otherwise invites destruction of our citizens' faith in our electoral process." (Internal quotation marks omitted.) *Butts* v. *Bysiewicz*, supra, 298 Conn. 683 n.16.

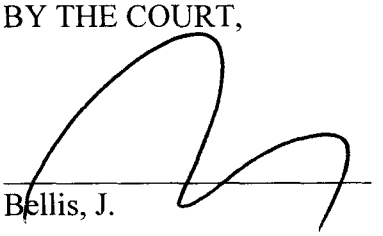
The application of the mandatory language of the statute in this case is admittedly harsh, especially in light of Derek Buckley's status as an incumbent. Nevertheless, the court cannot issue an order that it is without authority to issue. The court notes that the harshness of the result is reduced by the availability to the plaintiffs of alternative means of access to the ballot. For example, the plaintiffs are presently permitted to register as write-in candidates. See General Statutes § 9-373a (allowing registration of write-in candidates up to fourteenth day preceding election); see also *Butts* v. *Bysiewicz*, supra, 298 Conn. 672 n.5, 689 (harshness of enforcing election law mitigated by alternative means of gaining access to ballot).

III

CONCLUSION

For the foregoing reasons, the plaintiffs' application for permanent injunction (#100.35) is DENIED. Judgment shall enter accordingly.

BY THE COURT,



Bellis, J.